



HB 5136



SUPPORTED DECISION-MAKING FACT SHEET

- Although WV's Guardianship and Conservatorship Act [§44A-2-10(a) currently states: "In making the determination, the court shall consider the suitability of the proposed guardian or conservator, the limitations of the alleged protected person, the development of the person's maximum self-reliance and independence, the availability of less restrictive alternatives including advance directives and the extent to which it is necessary to protect the person from neglect, exploitation, or abuse," **many people are unnecessarily placed under restrictive guardianships when appropriate tools and processes are not used by those responsible for determining if a person is capable of making decisions that impact various aspects of their lives.**
- Many would be able to make their decisions if they received individualized assistance from people they trust, allowing them to retain their legal rights and dignity.
- Supported decision-making (SDM) enables individuals with disabilities and elders who may require assistance to make their own decisions with support, instead of having someone else, usually a guardian, make decisions for them.
- SDM is flexible and can change as the needs of the person change in order to provide more opportunities for independence.
- In SDM, the person with a disability or the elder may choose a group of people ("supporters") who help the person make decisions. The person with a disability, however, makes the final decision. The relationship between the person and his or her supporters can be written in a Supported Decision-Making Agreement. The agreement can then be used by other people like schools, doctors, or service providers who can be involved in the decision-making process.
- SDM does not replace guardianship. It is an additional and less restrictive option that is entirely voluntary. If this proposal is enacted, guardianship in its current form would still be available for anyone who wants it.
- People who unnecessarily lose their rights under guardianship burden our state's court system and tie up limited resources that could save money that could be used for monitoring against abuse by guardians.
- National organizations and federal agencies have recommended and endorsed using SDM as an alternative to guardianship, including the American Bar Association, National Guardianship Association, the U.S. Department of Education, U.S. Department of Health and Human Services, the National Council on Disability, Administration for Community Living, and the U.S. Senate Special Committee on Aging.
- While SDM is already being practiced in West Virginia, codifying these provisions would make SDM more accessible to more people. Some want to rightfully use this tool but are fearful without legislation.
- 18 states and the District of Columbia have already passed legislation.

FOR MORE INFORMATION CONTACT THE WV DEVELOPMENTAL DISABILITIES COUNCIL, CHRISTY BLACK, ADVOCACY SPECIALIST, (304) 558-4185, CHRISTY.D.BLACK@WV.GOV OR ASTRIVE ADVOCACY, CHRISTINA SMITH, DIRECTOR, (304) 483-6172, CHRISTINA.SMITH@ASTRIVE.ORG